S.B.CIVIL MISC. APPEAL NO.197/1992
(Smt.Laxmi Bai & ors. Vs. Gopilal & ors.)

Date of order : 04.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.G.Vaishnav for the appellants
Mr.B.L.Bhati, Addl. Government Advocate
for respondents No.2 and 3

This is a claimants' appeal against the award dated 24.01.1992 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.219/1987 seeking enhancement over the amount of Rs.80,000/- awarded as lump sum compensation by the Tribunal.

Brief facts relevant for determination of the questions involved in this appeal are that the accident in question occurred on 01.05.1987 and the deceased Nathulal aged 40 years who was riding a scooter bearing registration No.RRY 9363 was hit by a jeep bearing registration No.RRY 343 belonging to respondents No.2 and 3 that was driven by respondent No.1 Gopilal. The deceased sustained several injuries and succumbed to those injuries in hospital. The claimants, wife and minor sons of the deceased Nathulal claimed compensation with the submissions that deceased was 40 years of age and was employed as driver with

Hindustan Zinc Ltd. at Matoon Mines and was earning a salary of Rs.1717/- per month. Quantifying the losses, the claimants made a claim of Rs.5,38,355/-. The respondents took the defence that the accident occurred on account of the rash and negligent driving of the scooter by the deceased himself who hit against the jeep. The defence version regarding negligence of the deceased was not believed by learned Judge of the Tribunal and the accident was held to have occurred for the rash and negligent driving of the jeep driver.

Taking up quantification of compensation, learned Judge of the Tribunal has referred to the evidence about salary of the deceased at Rs.1700/- per month and his age at 40 years and has abruptly concluded that Rs.80,000/- would be just compensation in the case. The learned Judge also observed that compensation amount was not intended for profiteering but only for help to the family in the time of distress. The entire consideration of the learned Judge reads thus,-

> "मैंने गंभीरता से समस्त साक्ष्य का अवलोकन किया। मेरे मत से अधिकरण का प्रथम दायित्व यह है कि दुर्घटना के समय मृतक के सहारे जो उसके परिवार की आर्थिक स्थिति थी, क्षतिपूर्ति की राशि दिला लगभग वही समान स्थिति उत्पन्न करने का प्रयास किया जाना चाहिये। क्षतिपूर्ति की राशि लाभ कमाने का साधन नहीं है वरन संकट के समय उत्पन्न आवश्यक आर्थिक स्थिति को बनाये रखने व परिवार को टूटने से बचाने का आधार है।

इन परिस्थितियों के आधार पर साक्ष्य का विचेन आवश्यक है। लक्ष्मी बाई ए0ड0 1 ने अपने अपने पति की मासिक आया 1717/- बताई है। राम गोपाल ए0ड03 ने भी उसका वेतन 1700/- बताया है वेतन का प्रमाण पत्र प्रदर्श -1 पेश हुवा है और इस आधार पर मृतक को मृत्यु के समय 1700/- वेतन मिलता था उसकी आयु 40 वर्ष थी अत: उसकी आर्थिक स्थिति व रहन सहन के स्तर को एवं अन्य सभी परिस्थितियों को जिसमे दाम्पत्य सुख से वंचित होना, मासिक आय और परिवार की सुरक्षा सभी शामिल करते हुवे मैं यह उचित समझता हू कि यदि क्षतिपूर्ति की राशि 80,000/- दिलाये जाय तो इस पर मिलने वाले तिमाही ब्याज से ही प्रार्थीगण को मृतक की मृत्यु के समय मिलने व होने वाले आर्थिक स्तर की बराबरी हो सकेगी। प्रार्थीगण की ओर से जो क्लेम की राशि बताई गई है वह अत्याधिक है जिसे मैं स्वीकार करना उचित नहीं समझता । अन्तरिम एवार्ड की राशि इस एवार्ड की राशि में समायोजित होगी। प्रार्थीगण इस एवार्ड राशि पर आवेदन पत्र प्रस्तुत करने की तारीख से 12 प्रतिशत वार्षिक की दर से ब्याज विपक्षीगण से पावेगें।"

Assailing the award aforesaid, learned counsel for the appellants has contended that learned Judge of the Tribunal has been seriously in error in not making calculation of a just compensation on the basis of relevant principles and the award of Rs.80,000/- remains grossly inadequate and deserves suitable enhancement. Mr.B.L.Bhati, learned Addl. Government Advocate has vehemently opposed and submitted that the learned Tribunal has rightly awarded the compensation of Rs.80,000/- and no case for enhancement is made out.

Having heard learned counsel for the parties and having perused record, this Court is clearly of opinion that the award

made in the present case remains grossly inadequate on its quantification of compensation and deserves suitable enhancement.

A bare look at the consideration by the learned Judge of the Tribunal makes it apparent that the learned Judge has not at all addressed to any of the relevant principles and has straight away arrived at a figure of Rs.80,000/- as a lump sum compensation amount. Even after applying the relevant principles on most conservative estimate, the impugned award cannot be sustained. The deceased was 40 years of age and was in settled job as driver with Hindustan Zinc Ltd. and was admittedly earning Rs.1700/- per month. Providing for reasonable future enhancement even 1.5 times of the salary, the average salary of the deceased comes to Rs.2500/- and even after providing for one third towards his personal expenditure by the deceased, a likelihood of average monthly contribution by the deceased to the claimants at Rs.1700/- per month, i.e. Rs. 20,400/- per annum cannot be ruled out. The deceased was 40 years of age and going by the Second Schedule to the Motor Vehicles Act, 1988, learned counsel for the claimants has submitted that multiplier of 15 ought to have been adopted. Having regard to the circumstances of the case, this Court is of opinion that interest of justice will meet if a multiplier of 12 is applied and applying such multiplier of 12

to a multiplicand of Rs.20,400/- per annum, the figure of pecuniary loss shall stand at Rs.2,44,800/-. The wife, 35 years of age, deserves to be allowed consortium at Rs.10,000/- and the minor sons, 14 and 12 years of age respectively, deserve to be allowed Rs.5000/- each towards loss of love, affection and guidance of their father and, therefore, non-pecuniary losses deserve to be allowed at Rs.20,000/-. Another sum of Rs.2000/- could reasonably be allowed towards funeral expenses. In this view of the matter, the claimants are entitled for an award of Rs.2,66,800/- (Rs. 2,44,800/- + Rs. 20,000/- + Rs. 2,000/-) in their favour in place of the award of Rs.80,000/- made by the Tribunal. Therefore, the claimants are entitled a further amount of Rs. 1,86,800/-.

So far interest is concerned, the Tribunal has awarded interest at the rate of 12% per annum. However, in view of the amount of compensation being enhanced in this appeal, it is considered appropriate that the claimants be allowed interest at the rate of 7.5% per annum from the date of filing of claim application on enhanced amount of Rs.1,86,800/-.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award dated 24.01.1992 is modified and the claimants are further awarded an amount of Rs.1,86,800/- with interest at the rate of 7.5% per annum from the date of filing of the application. It shall be required of the

respondents No.2 and 3 to make deposit of the amount under this modified award within 30 days from today with the Tribunal. Upon deposit, the Tribunal shall carry out apportionment amongst the claimants and shall also make orders for cash payment/term deposit in the same proportion and manner as adopted in the impugned award. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

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